

IN THE MATTER OF)
RUTH L. RILEY, deceased) C.A. No. 5436-ML

Submitted: September 27, 2012
Draft Report: October 24, 2012
Final Report: November 7, 2012

Patricia Riley, pro se, Respondent.

LEGROW, Master in Chancery

This action comes before me on a petition for a decree of distribution in an estate matter. The petitioner and his sister, the respondent in this action, are the intestate heirs of their mother's estate, and under 12 *Del. C.* § 503, the estate ordinarily would be divided evenly between the two of them. The petitioner argues, however, that his sister is not entitled to any additional funds from the estate because she benefited when the estate's property was sold and the proceeds were used to pay off a mortgage she owed on the property, which had the effect of decreasing the amount available in the estate for distribution to the heirs. The petitioner also contends that the respondent's share of the estate should be further reduced because her actions (or lack thereof) as administratrix depleted the value of the estate. For the reasons set forth below, I conclude that, after accounting for the benefit she received when the mortgage was paid off, and the loss caused to the estate by the breach of her fiduciary duties, there are no funds remaining in the respondent's share of the estate. As such, all of the assets in the estate, net of costs and attorneys' fees, should be distributed to the petitioner. This is my report in this matter.

FACTUAL BACKGROUND

Ruth L. Riley (the "Decedent") died intestate on April 27, 2009. She is survived by her two children and heirs, Francis Riley and Patricia Riley.¹ Patricia was named the administratrix of the Decedent's estate (the "Estate") on May 20, 2009. The Estate's primary asset was the Decedent's real estate (the "Property") located at 32 Malvina Lane,

¹ Because the relevant individuals share the same last name, their first names have been used for purposes of this report. No disrespect is intended.

Newark, Delaware, which was encumbered by two mortgages the principal of which totaled \$69,000. The Property appraised for \$200,000 in August 2009. Patricia reported that the value of the Property was \$189,000 in the initial inventory she filed with the Register of Wills.² The Estate also included a 1998 Plymouth Neon,³ \$545.55 in a joint account, a refund of \$492.72 from Burns & McBride, reimbursement of \$1,281.80 reflecting overpayment to the funeral home for the Decedent's funeral services, and \$5,998 received in rent on the Property. The Estate's debts included the two mortgages, bills totaling \$8,781.02, and legal fees totaling \$12,800, of which \$11,000 remain unpaid.⁴

The primary issue in this case is the length of time Patricia took to sell the Property, and the loss incurred by the Estate as a result of that delay. The record shows that from the time she was appointed administratrix in May 2009 until the time she was removed in March 2011, Patricia's efforts to sell the Property were, at best, halting and unhurried. Following Patricia's appointment as administratrix, Patricia and Francis agreed that Patricia's niece would live in the Property from May through November 2009. Between November 2009 and June 2010, Patricia claims that she cleaned the Property, hired a painter for the Property, and fixed the heating, air conditioning, and plumbing. From February through August 2010, Patricia rented the Property to tenants.

² Tr. of Hearing on Pet., June 11, 2012 (hereinafter "Tr."), at 4.

³ The parties dispute the price at which the Neon was sold. Patricia claims it sold for \$800 while Francis claims it sold for \$1800. See Patricia Riley's responses to Distribution of Assets (hereinafter "Response") at 3; Tr. at 10. Francis has not presented evidence to show that the vehicle sold for \$1,800. Ultimately, however, this factual dispute need not be resolved, because I have determined that Francis is entitled to all of the funds remaining in the Estate.

⁴ See Response, Ex. 14A (listing \$1,800 paid in attorney's fees); Tr. at 10 (listing \$7,500 owed to Francis' attorney and \$3,500 owed to Patricia's attorney).

The tenants' lease made it difficult to sell the Property, and the Court instructed Patricia's counsel to encourage the tenants to leave the Property so that it could be sold.⁵

Francis's counsel told the Court that in March 2010, he contacted Patricia and asked when she planned to sell the Property. Patricia testified that at that time, she did not feel any particular rush to sell it.⁶ The unrefuted evidence demonstrates that in the first year and a half that she served as administratrix, Patricia did not take any significant steps to put the Property up for sale.⁷ She finally listed the Property on November 10, 2010 for \$179,000, but she received no offers.⁸ Patricia did not allege or testify that she made any further attempt to market the Property, and despite receiving no offers, she did not lower the price. The Property was vacant from August 2010 until February 2011, when Patricia moved into the Property. Patricia finally moved out in June 2011.

On April 27, 2010, Francis filed a petition to remove Patricia as administratrix and sell the Property.⁹ The petition was denied on June 23, 2010 because Patricia's lawyer offered to take the appropriate steps to administer the Estate.¹⁰ On February 22, 2011, Patricia's lawyer filed a petition to withdraw as Patricia's counsel, alleging that Patricia acted against her advice and failed to pay her legal fees.¹¹ The petition was granted on

⁵ Tr. at 44-45.

⁶ *Id.* at 52.

⁷ *Id.*

⁸ Patricia contests that the house was ever listed at a price above \$157,000. *See* Response at 5. Francis, however, submitted a listing agreement signed by Patricia and dated November 15, 2010 that listed the Property for \$179,000. *See* Letter from John S. Grady, dated July 13, 2012 (hereinafter "Letter"), at Ex. 1. Patricia offered no objection to this evidence, and conceded that she listed the Property before she was removed as administratrix. *See* Response at 4.

⁹ Pet. for Change of Executor and for Private Sale of Decedent's Real Property Pursuant to 21 *Del. C.* §2701.

¹⁰ Tr. at 8.

¹¹ *Id.*

March 31, 2011, at which time Patricia was removed as administratrix and Francis was appointed.

In sharp contrast to Patricia's actions, Francis moved promptly to repair and market the Property once he was appointed as administrator. He hired his repair company to remove the entire back of the garage, fix the roof system, fix the back wall, replace all the framing in the house, fix the door, clean the gutters, and perform cosmetic work around the Property.¹² Francis testified that some of the work done while Patricia was administratrix was poorly performed and needed to be redone.¹³ This included replacing the entire roof system of the garage where Patricia used a patch to cover up rotting wood.¹⁴ Additionally, Francis testified that the painter hired by Patricia dripped paint on the hardwoods floors, further lowering the value of the Property.¹⁵

Francis listed the Property for sale in April 2011, but his ability to sell the Property at a price close to the appraised value was hindered by the initiation of foreclosure proceedings that were the result of Patricia's failure to make timely mortgage payments. After the Decedent died, Patricia initially made full payments on the mortgages but by March 17, 2010, she had stopped making full payments, and in February 2011, the bank notified her that it would begin foreclosure proceedings if she did not renew making full payments.¹⁶ Patricia's unexplained delay in marketing the Property is all the more insensible because she knew that she was unable to satisfy the monthly mortgage

¹² *Id.* at 30.

¹³ *Id.* at 30-31.

¹⁴ *Id.*

¹⁵ *Id.* at 31.

¹⁶ *Id.*

payments. Francis was served with foreclosure papers shortly after he listed the Property in April 2011 for \$155,000.¹⁷ Still, once Francis listed the Property, several offers were received. The first offer on the Property was received on April 21, 2011 and was for \$157,500. That offer was withdrawn when the buyer's inspection revealed termite damage. The second offer was received on July 13, 2011 and was for \$125,000. This offer was delayed and ultimately fell through because the buyer could not obtain a mortgage. On October 25, 2011, Francis, feeling pressure to sell quickly due to the foreclose action, accepted a third offer of \$120,000. The Property was sold on November 22, 2011.

The two mortgages on the Property were for \$9,000 and \$60,000. It is undisputed that the Decedent incurred a portion of that debt on behalf of her daughter, Patricia. Patricia concedes that she was liable for \$36,100 of the \$60,000 mortgage, plus interest, which accrued at a rate of 6.24%.¹⁸ When the Property finally was sold in late November 2011, the proceeds of the sale were used to satisfy the mortgages. Because the \$60,000 mortgage was taken out in March 2003 and paid off at the end of November 2011, interest had accrued for 105 months. Accounting for interest, Patricia was responsible for \$46,939.20 of the \$60,000 mortgage. During trial in this action, Patricia claimed she had paid \$51,794.92 toward the mortgage, but only provided evidence that she had paid

¹⁷ *Id.* at 28.

¹⁸ *Id.* at 13.

\$36,193.93.¹⁹ She therefore owed \$10,745.27 at the time the Property was sold and the mortgage was paid off.

After the mortgages were paid, net proceeds of \$49,986.06 were paid to the Estate. After attorneys' fees incurred by the Estate are paid, \$38,986.06 will be left for distribution to the Decedent's heirs.

On April 5, 2012, Francis filed a Motion for Determination of Distribution of Assets Pursuant to 12 *Del. C.* § 2332 (the "Motion"), arguing that the entire balance remaining in the Estate should be paid to him because Patricia's failure to administer the Estate in a timely manner caused the Property to be "sold at a substantially lower price than if it had been marketed immediately upon the opening of the estate" and because Patricia benefitted from the mortgage being paid off.²⁰ Patricia opposed the Motion, arguing that a higher value could not have been received for the Property even if it had been sold earlier, and that she did not benefit from the mortgage being paid off because she already had paid her share of the mortgage.²¹

ANALYSIS

After considering the Motion and supporting materials submitted by both parties, I conclude that Francis is entitled to the entirety of the funds remaining in the Estate. After (1) reducing Patricia's portion of the Estate to account for the benefit she received when the mortgage was satisfied, and (2) charging Patricia for the loss attributable to her failure

¹⁹ Patricia was given the opportunity to supplement the record with additional evidence of mortgage payments but did not provide any additional evidence.

²⁰ Mot. at 4, 6.

²¹ Response at 2, 5.

to perform her duties as administratrix, Patricia owes the Estate more than she would receive if the Estate were split between the two heirs.

I. Mortgage

When the mortgages were paid from the proceeds of the sale of the house, Patricia received a benefit from the Estate in the amount of \$10,745.27, the amount she owed on the mortgage as of November 22, 2011. Patricia's share of the Estate should be reduced by half of this amount, or \$5,372.64.²²

II. Loss to Estate Resulting from Patricia's Breach of her Fiduciary Duties as Administratrix

In addition to the benefit Patricia received when the mortgage was satisfied, Francis further argues that Patricia's share of the Estate should be charged with the loss to the Estate resulting from her failure to perform her duties as administratrix. Francis contends that the value of the Estate was depleted by: (1) Patricia's failure to act with alacrity to close the Estate within one year; (2) her failure to market the Property diligently and proactively, and (3) her failure to make timely mortgage payments, all of which resulted in the Property selling at a price substantially below its appraised value.

A. Patricia Failed to Administer the Estate in a Timely Manner

"Ordinarily, the settlement of an estate by an administrator is expected to take place within one year of the date of the granting of letters, unless circumstances justify a

²² Reducing Patricia's share by half her benefit equalizes Francis and Patricia's benefit from the Estate because Francis is the only other heir.

longer period.”²³ Within a year, an administrator should “reduce the decedent’s personal assets to possession, pay the debts of the estate, and distribute the balance to those entitled to it.”²⁴ To determine whether a longer period of estate administration is justified, this Court must consider “whether there has been an exercise of good faith and reasonable diligence under all the circumstances.”²⁵

Given the record, I cannot conclude that Patricia exercised good faith and reasonable diligence under the circumstances. She was named administratrix in May 2009 and the Property was appraised for \$200,000 in August 2009. From May through November 2009, Patricia’s niece occupied the Property. By consenting to this delay in the sale of the Property, Francis waived his claim that this was a breach of Patricia’s duties as administratrix. After her niece moved out, however, the Property sat empty for several months, was rented to other tenants, sat empty for several more months, and was then occupied by Patricia. Patricia did not list the Property until November 2010, a year after her niece moved out, nearly 18 months after her appointment as administratrix, and more than six months after Francis initiated proceedings to remove Patricia as administratrix. Patricia made no other efforts to sell the Property, and due to this lack of effort, received no offers on the Property during her nearly two year term as administratrix. For the majority of her time as administratrix, Patricia allowed the Property to sit vacant or lived in it herself. In comparison, within one month of his

²³ *Matter of Estate of Hedge*, 1984 WL 136921, at *3 (Del. Ch. Feb. 8, 1984) (citing 12 Del. C. § 2331; *In re Estate of Brown*, 51 A.2d 564 (Del. Orph. 1947)).

²⁴ *Id.* (citing *In re Spicer’s Estate*, 120 A. 90 (Del. Orph. 1923)).

²⁵ *Id.* (citing *In re Estate of Brown*, 51 A.2d 564).

appointment as administrator, Francis repaired and relisted the Property and received an offer to purchase the Property. Because Patricia did not exercise good faith and reasonable diligence, she cannot justify the long administrative period. To the contrary, Francis's term as administrator demonstrates that, with the proper care and attention, the Property could have been sold within nine months, if not fewer.

B. Patricia's Conduct Does Not Meet the Standard of 12 Del. C. § 3302

As administratrix of the Estate, Patricia served in a fiduciary capacity.²⁶ As such, she had a duty to act in good faith when handling the Estate's property.²⁷ Her duties are set forth in 12 Del. C. § 3302, which provides: "[i]n . . . selling and managing the property for the benefit of another, fiduciaries shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs."²⁸ When this duty is breached, this Court will hold the administrator "accountable for the loss or depreciation of the assets."²⁹

By failing to make any substantial effort to sell the Property, Patricia failed to do those things which a man of "prudence, discretion and intelligence" would do to obtain the best possible price for the Property. This Court has held that in order to meet his duty, an administrator should "try to obtain the maximum price for [the property] He should arrange for competitive bidding if that is possible and appropriate to the asset

²⁶ *Id.* at *2.

²⁷ *Id.*

²⁸ 12 Del. C. § 3302.

²⁹ *Matter of Estate of Hedge*, 1984 WL 136921, at *2.

involved, but in any case he ‘should use reasonable trouble and expense to bring to the attention of possible buyers the fact that the property is in the market.’”³⁰

Patricia did not arrange for competitive bidding on the Property and failed to even list the Property until November 2010, 18 months after her appointment as administratrix and a full year after her niece moved out. After her niece moved out, Patricia allowed the Property to sit empty for multiple periods of time without renting it, and then lived in it herself without paying rent, making mortgage payments, or providing any demonstrable benefit to the Estate. She did not market the Property, and despite not receiving any offers when it was listed at \$179,000, Patricia did not lower the price. By keeping the Estate open for so long, the Property became a wasting asset. The mortgages accrued interest and the Property required upkeep, including cleaning, repairs, and the payment of utility bills. Eventually, Patricia was unable to make the mortgage payments and the Property went into foreclosure. As a result, when Francis took over as administrator, he was forced to sell the Property promptly and received less for the Property than he otherwise would have.

Patricia’s breach of her fiduciary duty is especially clear in comparison to Francis’s actions as administrator. Francis was appointed as administrator on March 31, 2011. Soon after his appointment, he completed numerous repairs on the Property and listed it for sale in April 2011. An offer was received for the Property on April 21, 2011, less than one month after Francis was appointed administrator. That offer fell through due to termite damage, but Francis quickly repaired the termite damage and a second

³⁰ *Lockwood v. OFB Corp.*, 305 A.2d 636 (Del. Ch. 1973) (quoting Bogert, *Trusts and Trustees* § 745).

offer was received on July 13, 2011. This offer failed due to issues with the buyer, but a third offer was received in October 2011 and the sale closed soon after.

C. Breach of Duty Resulted in Loss to Estate

Patricia caused damage to the Estate by not administering the Estate in a timely manner and by failing to act in good faith when handling the Property. This damage should be charged against her share of the Estate. Francis bears the burden of showing the loss to the Estate.³¹ He has shown that if the Property had been sold promptly, and was not under the threat of foreclosure, the Property could have been sold at approximately \$150,000. In an effort to counter Francis's evidence, Patricia produced some website printouts showing that other homes in the area sold in the range of \$113,000 to \$130,000 during the period in question. The evidence Patricia produced of sales of other homes is not persuasive. There is no evidence in the record that the houses were comparable to the Property in location or condition, or that the circumstances under which the houses were sold were similar. Particularly when compared to the expert appraisal, Patricia's inventory price, and the first offer, this evidence is insufficient to support a lower value for the Property.

Because the evidence establishes that the Property could have sold for \$150,000, but it was actually sold for \$120,000, Patricia's breach of her fiduciary duty cost the Estate \$30,000, less the additional amount the real estate agent would have received in commission for a higher sale price. Because the brokerage fee was 5%,³² if the house had

³¹ *Id.* at 640.

³² Letter at Ex. 1, Ex. 2.

sold for \$30,000 more, the real estate agent would have received \$1,500 more.

Accordingly, Patricia's breach cost the estate \$28,500. Her share of the Estate should be reduced by half of this amount, or \$14,250.

After administrative and legal expenses are paid, \$38,986.06 will be left in the Estate.³³ Under 12 *Del. C.* § 503, Patricia's share of the Estate would have been \$19,493.03. Considering the benefit Patricia received when the mortgage was paid off, and the damages her delay and fiduciary breaches caused to the Estate, her share should be reduced by \$19,622.635. Because this amount exceeds the value of her share of the Estate, the Motion is granted in its entirety.

For the foregoing reasons, the Motion for Determination of Distribution of Assets Pursuant to 12 *Del. C.* § 2332 is granted. This constitutes my report. Exceptions to this report should be taken in accordance with Rule 144.

IT IS SO ORDERED.

/s/ Abigail M. LeGrow
Master in Chancery

³³ The Motion lists inconsistent values for the Estate. In paragraphs 23 and 37, the Estate is valued at \$49,886.06. In paragraphs 36 and 37, the Estate is valued at \$49,986.06. Because the difference in these values does not affect the result, this inconsistency is not material.